



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 26, 1996

Ms. Raenell Silcox  
Attorney  
Resource Protection Division  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

OR96-2254

Dear Ms. Silcox:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37549.

The Texas Parks and Wildlife Department (the "department") received a request for information concerning the site of the former Hi-Yield Chemical Company in Commerce, Hunt County, Texas. A previous request from the same requestor was addressed under Open Records Letter No. 95-665 (1995). In addition to an update to the documents addressed in Open Records Letter No. 95-665 (1995), the requestor seeks a copy of "all records related to any party, or the attorneys for any party," in the following lawsuits:

*Felicia Adair et al. v. VPG*, Tarrant County, Cause No. 236-158649-95;

*James L. Adams et al. v. Southern Pacific et al.*, Jefferson County, Cause No. D-152218;

*William M. Goodson et al. v. Southern Pacific et al.*, Jefferson County, Cause No. A-152785;

*Henry Relford et al. v. Southern Pacific et al.*, Jefferson County, Cause No. B152481;

*Hildred Ainsworth Shaw et al. v. Southern Pacific et al.*, Jefferson County, Cause No. E152917;

*J.D. Atkins v. Southern Pacific et al.*, Jefferson County, Cause No. A151335;

*Vernon Adams et al. v. VPG et al.*, Fannin County, Cause No. 31674;

*Margaret Gayle Morris et al. v. Southern Pacific et al.*, Fannin County, Cause No. 31672;

*Teresa Lynn Collins et al. v. Southern Pacific et al.*, Hunt County, Cause No. 56,318; and

*Swindell et al. v. VPG et al.*, Hunt County, Cause No. 56,453.

However, the department seeks to withhold the requested information based on sections 552.101, 552.103, 552.107 and 552.111 of the Government Code. You have enclosed Attachments III-VI as the documents the department seeks to withhold. As none of the information submitted references any of the aforementioned lawsuits, we assume that you have already provided that information to the requestor.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991).

The Governor of Texas designated the department as one of the trustees for the state's natural resources pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, and the Clean Water Act, 33 U.S.C. § 1321(c). See 40 C.F.R. § 300.605<sup>1</sup> As a trustee, the department may bring a court action to recover natural resource damages sustained as the result of an unauthorized discharge of hazardous material. See Nat. Res. Code § 40.107. You inform us that a natural resource damage claim can only be resolved in one of two ways: settlement or litigation. You also inform us that the trustees continue their involvement in evaluating and assessing a claim for natural

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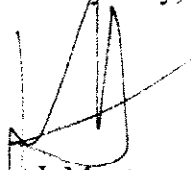
<sup>1</sup>The state trustees for natural resources also include the Texas Natural Resource Conservation Commission and the Texas General Land Office.

resource damages at the Hi-Yield site. You assert that the submitted documents reflect the current method of operation involving the trustees' equal input into the evaluation and assessment of the damage claim as well as the eventual expenditure of recovery in their pursuit of a joint claim. Consequently, you assert that the documents should be excepted from public disclosure because they contain information that could compromise the trustees' position in joint settlement negotiations or litigation.

We believe that the requested information relates to settlement negotiations or reasonably anticipated litigation to which the department is or may be a party. We, therefore, conclude that the department may withhold the requested information based on section 552.103 of the Government Code. We note that the applicability of section 552.103(a) ends once a settlement agreement is reached or the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). We further note that section 552.103(a) protection ends when the opposing parties in anticipated litigation have seen or had access to requested information. Open Records Decision Nos. 597 (1991), 349 (1982).<sup>2</sup>

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>Please note that although you claim in your original letters that section 552.101 and 552.107 apply to the documents you seek to except from disclosure, you do not explain how these sections apply to any specific information. The Government Code places on the custodian of records the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). As you have not met your burden as to the application of section 552.107, we consider that exception waived. We also conclude that there is not confidential information or information protected by constitutional or common-law privacy in the submitted documents. Therefore, section 552.101 does not except the requested information from required public disclosure. Since we are resolving the exception issues pertaining to the submitted documents under 552.103 we need not address the 552.111 exceptions claimed.

Ref.: ID# 37549

Enclosures: Submitted documents

cc: Ms. Cathryn G. Binz  
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(w/o enclosures)